

1894-065 Chancery Causes: William M. Pennington vs. Harvey Barton &
Lee Co.

Andis

CA-Contract Dispute
T-Property

-Deed

To the Hon. Trig Miller, Judge of the Circuit Court for ~~p~~ee
County, Virginia:-

Humbly complaining your orator William M. Pennington would respectfully represent unto your honor that the Pennington Gap improvement Company, a corporation organized and existing under the laws of the state of Virginia was the owner of a certain tract of land in fee, known as lot No. 6 in Block No. 3 in the plat and plan of the town of Pennington Gap; that heretofore, to wit on the 3rd day of Feb. 1891 the said company sold and delivered and conveyed said lot in consideration of the sum of one hundred and fifty dollars to one Harvey Barton; that the terms of the said sale to the said Barton was fifty dollars in hand, fifty dollars due Feb 3, 1892, and fifty dollars due 3 Feb, 1893, with interest on the deferred payments from the date of sale; that the said company made its deed to the said lot of in which the said company reserved its lien for the remainder of the purchase price, a copy of which said deed is here filed and made apart of this bill, ^{marked "deed"} that the said deferred payments became due, fifty dollars Feb 3, 1892 which has been paid so far as your orator knows, and that the last deferred payment became due and payable on Feb 3, 1893, but that no part thereof has been paid, and that the same is yet due and unpaid; that the said Harvey Barton since the said sale of the said lot to him by the Pennington Gap Imp. Co. sold and delivered the said lot of land as above described to one John Andis, and that he is now in the possession of the same, but your orator not finding any deed on record in the clerks office from the said Barton to the said Andis, he is unable to file a copy thereof.

Your orator further alleges and will show unto your honor that the said Pennington Gap Improvement Company for value received on the _____ day of _____ 189__ assigned the note which was for the last deferred payment to him, which said note is for fifty

which said notice has been filed and made part of this bill. dollars, with interest from the 3rd day of February, 1891, and your orator is advised that he has a right to all the rights of the said company, and therefore a right to enforce the said lien against the said land.

The premises considered your orator is advised that the said company has a lien against the said lot of land and that the same is only enforceable in a court of equity, for the amount of the the purchase money yet due and unpaid, and that by reason of the said assignment to your orator he has a right to have the said lien enforced in this court.

The prayer therefore of your orator is that, that your honor take cognizance of your orator's cause, that a vendor's lien be declared in favor of your orator, that a judgement be ^{given him} in his favor against the said Barton for the said sum of money with its ~~to be enforced against said lot~~ interest as aforesaid, that as there is no other lien against the said tract of land that a commissioner be appointed to sell the said tract of land to pay the said sum of money with its interest and the costs of this suite, and that the said Harvey Barton ~~be~~ ~~made xxx party xxx defendant xxx tax xxx~~ and John Andis be made parties defendant to this bill of complaint and answer the same fully and completely on oath. And may all further and general relief be granted your orator as the nature of his cause and equity demands. And your orator will ever pray &c.

Pennington Bros. p. q.

\$50.00

Pennington's Gap, Lee Co., Va., February 3rd 1891

Two Years after date, with interest from date, I

promise to pay to the order of Pennington's Gap Improvement Company

Fifty

DOLLARS,

negotiable and payable at Puwells Valley Bank, being the second

deferred installment of the purchase price of Lot No. 6, in Block No. Three,

Plat No. 1, of the town of Pennington's Gap, and I hereby waive the benefit

of all Homestead exemptions as to this debt, and I agree that if suit is brought on this Note to enforce payment thereof, to pay Ten per cent. Attorney's fees on the amount due.

~~If building is done on this lot
discharge of 5% is to be allowed~~

Due February 3 1893.

Address, H. Barton

A Barton

If obligor builds
a \$400⁰⁰ house
on the lot for which
this note is given
he is to have five
percent discount
on same. Build-
ing to be done 60 days
E. W. Pennington
att'y for J. L. [unclear]

For Value received the [unclear]
Got [unclear] as [unclear] the [unclear]
note to him [unclear]
During the [unclear] [unclear]
[unclear] [unclear] [unclear] [unclear]
[unclear] [unclear] [unclear] [unclear]

To the Honorable W. T. Miller, Judge
of the Circuit Court of Lee Co., Va.

The separate answer ^{+ demurrer} of H. Barton
to a bill in chancery exhibited a-
gainst himself and John M. Audis.
by Wm. Pennington, assignee &c.

Respondent says said bill is
not sufficient in law to call upon
him to answer in this court, and
he demurs thereto & prays judge-
ment of said demurrer &c

Should other and further an-
swer be required of him answering
he says: That it is true that on the
3^d day of Feb. 1891, he purchased from
said P. & G. Int. Co the lot in the
bill mentioned. It is also true
that at the same time said Company
by its Atty in fact conveyed said
lot of land to him, but respondent
does not admit that the paper filed
with the bill is a copy thereof, be-
cause the same is not certified as
a copy. It is further true that
on the — day of Dec 1891 he
sold and conveyed said lot to J. M.
Audis.

Respondent says that at the

time he purchased said lot it was his understanding and he then made an agreement with said company that he should have a discount of 50% on the purchase price ~~was to be allowed~~ if buildings were erected thereon. This stipulation was made a part of the face of the notes at the time said notes were executed and delivered.

Respondent alleges that on the day on which he bought said lot he ~~had~~ H. S. Crowell a contract to build a dwelling house on said lot; that the wood work on said house was on the 14th day of March 1891 said ~~wood work on said house~~ was completed by said Crowell at a cost of \$187.⁰⁰. Respondent afterwards had said house painted, papered &c and had built a cook room, and stable at a cost of some \$75 or more.

When the deferred payments became due your respondent

fully expected a discount of 5% thereon on account of the stipulation in said note if he should build and erect a house worth \$400.00. on said lot.

When respondent sold to ~~Andis~~ said Andis assumed to pay the deferred payments on said lot.

Respondent says that at the time he executed the note here sued on he had no knowledge of the writing or agreement on the back of said note. He does not now remember that at that time he looked at or examined the back of said note.

Duncan Wyatt Esq.
Sworn to by H Barton before me
this June the 8th 1894

A B Munsey Clerk

J. M. Audis et al.
ads $\frac{2}{3}$ Answer of
 $\frac{1}{3}$ H. Barton
Jm M Pennington Assoc

To the Hon. W. T. Miller, Judge of The
Circuit Court of Lee County, Va.

The separate demurrer and answer of John M. Audis to a bill in Chy. exhibited against himself and H. Barton in this honorable court by W. M. Pennington assignee of Pennington Gap Improvement Company.

Respondent says that said bill is not sufficient in law, and he demurs thereto and prays judgment &c.

And not waiving said demurrer but relying and insisting thereon, should other and further answer be required, answering he says: That it is true that his co-defendant, H. Barton, on the 3^d day of Feb. 1891, purchased the lot in the bill mentioned from the complainant. It is further true that on that day said Company, by its Atty. in fact, conveyed said tract of land to said Barton, but respondent does not know and does not admit that the paper filed with the bill is a copy

thereof, because the same is neither marked nor certified as a copy.

Respondent says that it is further true that the deferred payment which became due on the 3rd day of Feb 1892 has been paid. It is further true that said deferred payment which became due on Feb 3rd 1893 has not been paid, but the same is not his fault as he promptly offered payment of every cent due upon said note immediately upon maturity thereof. Respondent says that he is informed, believes and here charges it to be true that at the time of the purchase of said lot by the said Bartow that it was expressly agreed by and between him and said Company that if he built upon said lot that he was to have a discount of 5% upon the purchase price which he agreed to pay for said lot. And respondent is ad-

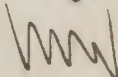
vised that this stipulation was made a part of the face of said note and constituted a part of it at the time it was executed and delivered. Respondent further says that the said Barton did, before the 15th day of March 1891 build a dwelling house on said lot worth some \$200.00; that some two or three months thereafter he erected other buildings and improved said dwelling house making the total value of the buildings erected by said Barton about \$250.00 or \$245.00

Since Respondent has purchased said house he has made considerable improvements thereon and he says that the buildings now on said lot are reasonably worth the sum of \$500.00

Respondent further says that at the time he purchased from said Barton which was on — day of Dec. 1891 he assumed to pay the two deferred payments still due on said lot; that at the time he so purchased, he was informed

that the said Barton was entitled to said discount or rebate of 5% on the said deferred payments for said buildings erected by him. And when respondent settled the note which became due on the 3^d of Feb. 1892 said rebate ^{or discount} was allowed. And when the note here sued on became due respondent offered to pay it if said discount was given him; he is ready to pay it now provided said discount is given to him, and here offers to file the money in Court for the amount of said note, principal + interest, less the discount aforesaid of 5%.

Duncan Hyatt, p.d.
Sworn to before me by John M
Andis this the 8th day of June 1894
A B Munsey Clerk

John M Andis
ack  answer
W. M. Pennington

Wm M. Pennington assignee vs. (Ch. Chan.)
vs.
H. Barton et al. Defts.

This Cause came on again
this day to be heard upon the
papers formerly read therein
and the report of Court, E. W.
Pennington. On consideration
of all which and for reasons
appearing to the Court it
is adjudged, ordered and
decreed that said Cause
be ~~dismissed~~ stricken
from the docket.

Wm. M. Pennington
of secretarial

H. Barton & al

Recorded in
Chancery Order
Book Page 56

Enter this
Nov 7 1894
M J M

W. M. Pennington,

Compt.

H. Barton

vs.

and John M. Audes

In Chancery.

Defts.

This cause came on again this day to be heard upon the bill of *and exhibit filed therewith* the Complainant, *and demurrers* the separate answers of the said defendants, and exceptions to said answers, and was argued by counsel: On consideration of all which and for reasons appearing to the Court, said demurrers are hereby overruled; and for reasons *appearing* to the Court the Complainant's exceptions to said answers in so far as the same relates to or attempts to set up the plea of tender of payment, *is* hereby sustained, *and defendants by counsel say they do not desire to file further answers* ~~that~~ for reasons to the Court it is of the opinion that the said complainant has a vendors lien upon the lot of land mentioned in said bill and exhibit marked "deed", for the sum of \$50.00 with interest thereon from the 3rd. day of February 1891, till paid, and is entitled to have the same enforced against the said lot of land: It is therefore adjudged, ordered and decree that unless said defendants or some one for them do pay to the said Complainant the said sum of \$50.00 with interest thereon from the 3rd. day of February, 1891, till paid, and the costs of this suit, within 60 days from the adjournment of this Court, then E.W. Pennington, who is hereby appointed as special commissioner for the purpose, at the front door of the post office in the town of Pennington Gap, in this County, at public outcry and to the best and highest bidder, will expose said lot of land or enough thereof to pay said sum of money, its interest and costs ~~of this~~ suit for sale on a credit of six months time, except a sum sufficient to pay the costs of this suit and commissions of sale he will require to be paid down. From the purchaser for the deferred payment he will take bond payable to himself bearing interest from date of sale and with approved security, which when due he will collect and pay to the said Complainant. But before selling said lot of land said comr. shall advertise the time, terms, and place of sale by

Thur

-2-

posting notices at the front door of the court-house of this County, at said post-office, and at such other places as he may deem proper for thirty days. And before undertaking to perform the duties of this decree said Comr. Pennington will execute bond with security before the clerk of this Court in the penalty of \$200.00 conditioned as the law requires in such cases. And he will report his action to the next term of this court. And this cause is continued.

M E M O R A N D U M: The defendants say they feel themselves aggrieved by the terms of this decree, and that they desire to appeal therefrom. On the execution of a bond by said defendants or either of them before the clerk of this court in a penalty of one hundred dollars, conditioned according to law in such cases, the execution of the terms of this decree is hereby suspended for 30 days next hereafter.

are hereby overruled

W. M. Punnington

vs. Deane and 1

H. Barton et al

Out on Chap. Ord. Book P 48

Enter this
June 16th 1894.

Wm M. Remington

vs

H. Barton et al

To the Hon. J. H. Miller

Judge of the Circuit
Court for the County:

The undersigned
who was at the June term
1894 of your honor's court
appointed a special commissioner
for the purpose of selling
the lot of land in the case
and proceedings mentioned,
beg leave to report, that
he gave the required bond
before the Clerk of the Court
and duly advertised the
time, terms and place of
sale; but before the time
of sale, the said defendants
paid said Compt. the said
debt, and the cost of this
suit; so no sale was made
All of which is submitted
This Oct. 1st 1894,

W. M. Remington

Wm M. Huntington

vs Report of
Court.

H. Barton et al

of Scott County Ia

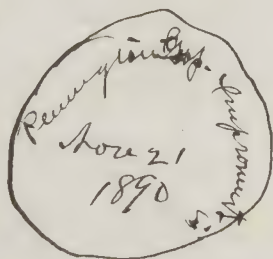
, part 4 of the second part:

...

~~feet and running back~~

IN TESTIMONY WHEREOF, the said Pennington's Gap Improvement Company has caused its corporate name to be hereunto signed and its corporate seal hereunto affixed by its said attorney in fact the day and year first above written.

By *E. H. Summerville*
Attorney in Fact.



I. J. A. G. Slyatt Clerk of the Court.

Given under my hand, this the 3rd day of February, 1891

J. A. Hyatt Libr

In the Clerk's office of the County Court of Lee County the 3rd day of February 189 1, the foregoing deed was presented and admitted to record, together with the certificate of acknowledgment thereunto annexed, and was recorded on the 4 day of Feb - , 189 1, in Deed Book No. 26-, page 290-491 1236.

Teste: *John A. Gibson,* Clerk.

Copy of.

No. 1.

DEED.

PENNINGTON'S GAP IMPROVEMENT COMPANY.

TO

N. Barton

For fee Copy -

\$1.00

John M. Andis v H. Bartow:
ads. 3 In Chancery.
W. M. Pennington, assignee &c.

And The said defendant H
Bartow comes and says that the
note in the bill mentioned is not
his note and this &c.

Sworn to by H Barton before me this the
8th day of June 1894

A B Munsey Clerk

John M. Audis et als.

Ads. ~~W. Pennington~~

Wm M. Pennington

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32

W.M.Pennington
vs.
John M. Andes etals.

Complt
Defts.

The exceptions of the plaintiff to the filing of the answers of said defendants in said cause: These defendants propose to file separate answers, but both virtuly both are the same in effect. They each in their answers admit the case of the complt. as set out in his bill, but attempt to avoid the object of the suit by pleading, as , the complt. supposes:

First non est factum, and ;

Second, Tender of payment.

The complt. for exceptions to the said answers, say: That said ~~y~~ answers ought not to be allowed to be filed because, the plea of tender is not in proper form, in this: it fails to al-
legethat they were redy, able and willing to pay and had been at all ~~in~~ times from the maturity of the note up to the institution of this suit, and that they had offered to pay and had tendered ~~to~~ *the* amount which they proposed to pay, without any conditions.

This suit being a suit to enforce a vendors lien and not to have judgement on a note or bond, they can not plead non est factum . The note filed in said cause is only the evidence of the amount still due ~~the same~~ on the purchaese price of the lot of land mentioned in the said suit/ and by the answers of both said defts. they admit that there is still as much as as is claimed by said plaintiff, yet due on said land, except the pitiful sum of \$2.50.

Then said deft. ~~Andes~~ *Andes* propose to pay in court the sum of money which he admits to be due except \$2.50, "but his attorneys say that they wont pay it unless the plaintiff will pay the costs of this suit. Money can only be paid in court in personal actions/ and not in these kind of suits. Code, #3296.

Respectfully
Pennington Bros.

Upton

not given F.M.W

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H^{on} Mr. Huntington
 vs Richard Chan-
 H. Barton et al

Plaintiffs Costs.
 C \$4.62
 S 1.00
 atty 5.00
 Estimated 5.00
 \$15.62

November Term 1894 Decree
 final. See Order Book
 Page 56.

Pl^{ts} Costs Recovered
 C 4.62
 S 1.00
 atty 5.00
 Estimated 5.00
 \$15.62
 Co. C 1.00
 16.62

November Term 1894
 Decree final See
 Order Book Page
 56 cts
 C 36